IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 405 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant
Versus
LAXMANDAS NARANDAS PANCHAL & 1 - Respondents

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Appearance :
MR A.J. DESAI, ASST. PUBLIC PROSECUTOR for Appellant:
MR JS YADAV for Respondents : 1 - 2.
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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 31/03/2006

ORAL JUDGMENT

1.The appellant - State of Gujarat has preferred this appeal challenging the order-in-judgment dated

21/1/1993 of learned JMFC, Santrampur rendered in Criminal Case No. 65 of 1991, acquitting the Respondents No. 1 & 2 – Original accused of the charges under section 498-A and 114 of Indian Penal Code. This Court (Coram: R.D. Vyas, J) on 24/9/1993 granted leave and admitted the appeal.

2. The facts in brief leading to filing of this appeal deserves to be set out as under.

The respondent no.1 – original accused happened to be the husband of deceased Kailasben. The respondent no.2 – original accused no.2 was mother-in-law of deceased Kailasben. The deceased Kailasben and respondent no.1 had married life of about 12 to 14 years. Deceased Kailasben committed suicide on 20th June 1990 between the period 1.00 to 5.00 hrs in the morning by dousing kerosene over her body in the latrine of her residence.

3.This unnatural death was reported to Santrampur police station, which registered the complaint and undertook necessary investigation. Necessary panchnama of scene of offence was drawn and the inquest panchnama was also

drawn. Thereafter the dead-body was sent for autopsy. The reason for cause of death was shock due to extensive 100 % burns as it appears in the postmortem note dated 22/6/1990. The police investigation revealed that there was mental torture, cruelty perpetrated towards the deceased by her husband and her mother-in-law which had driven her to commit suicide.

4. As the police statement and evidences collected by the police during investigation revealed commission of offence the police filed chargesheet in the Court of learned JMFC, Santrampur and who drew necessary charge at exh.3 against respondents no. 1 & 2 for commission of offence under section 498-A and 114 of I.P. Code. As the respondents denied the charge the case had proceeded further.

5.The trial court examined witnesses for the prosecution and afforded an opportunity to the accused envisaged under section 313 of Cr.P.C. pointing out the incriminating evidence and depositions against the accused. The accused did not put up any special case except that of mere denial and false implication. The trial court has framed two issues; viz. (1) Whether the

prosecution proves beyond doubt that the original accused no.1 & 2 have committed offence punishable under section 498-A and 114 in perpetrating mental and physical torture to the deceased Kailasben so as to drive her to commit suicide by setting herself ablaze between 1.00 – 5.00 hrs in the morning on 20/6/1990 ?; (2) What order ?.

The Issue No.1 is answered in negative and Issue No.2 is answered as per his order.

6. Learned trial Judge has discussed the evidences adduced by the prosecution in detail and come to the conclusion that the prosecution has failed in proving the guilt on the part of the accused beyond doubt and therefore, acquitted the accused no.1 & 2 of the charges under section 498-A and 114 of I.P. Code vide his judgment dated 21/1/1993 in Criminal Case No. 65 of 1991.

7. This Court has perused the record & proceedings and re-appreciated the evidence as they stand on record. This Court also extensively heard learned APP Shri. A.J. Desai for the appellant State of Gujarat and Shri. J.S. Jadav appearing for the respondents – original

accused.

8. The basic ingredient of Section 498-A requires that for bringing home the guilt on the part of the accused the prosecution has to prove subjection of married woman to cruelty in such a nature that it necessarily drive her to commit suicide or to cause great injury or danger to life, limb or health of the woman. This deserves to be borne-in-mind while examining and re-appreciating the evidence on record.

9.The fact remains to be noted that the prosecution has not examined any independent witness nor has it examined any neighbour who may depose about the day to day conduct of the husband-accused and the mother-in-law towards deceased Kailasben. The prosecution has examined Smt. Lilaben Gangaram Panchal, whose deposition is recorded at exhibit-12 who has stated in her testimony that the deceased Kailasben was ill treated by her in-laws especially husband and mother-in-law and therefore she might have committed suicide. This Lilaben Gangaram Panchal happens to be the step-mother of deceased Kailasben. Deceased Kailasben was born out of wedlock of one Tulsiben with Gangaram.

After the death of Tulsiben, witness Lilaben had married to Gangaram. Lilaben was domicile of Sagwada (Sagwara) district, Rajasthan. She has deposed in her testimony that before she married to Gangaram he already had one son Jagdishbhai and one daughter Kailasben i.e. deceased out of his earlier wedlock with Tulsiben. Out of Lilaben's wedlock with Gangaram she gave birth to Kushlata and Dhanpal. Thus Dhanpal and Kushlata were step brother and sister respectively of deceased Kailasben. Kailasben's real brother was serving at Kuwait. As per her deposition the witness Lilaben has stated that Kailasben got married to accused no.1 in the year 1977 and she had started residing at village Santrampur since then. She has stated that Kailasben's married life was not happy and accused no.1 used to occasionally beat deceased Kailasben. She has deposed that Kailasben was beaten time & again for dowry purpose. She has further stated that the step sister Kushlata's marriage was solemnized 4 years ago and in that marriage ceremony she had invited Kailasben and her husband but they did not attend the marriage. She has deposed in her testimony that at the time of incident she was in Rajasthan. Lilaben has deposed that she was informed about the

tragic death of Kailasben by one Shri. Hiralal Panchal and Bhikurama Sureshbhai Panchal. On receiving said news she along with 20 to 25 persons had come to Santrampur and after performing her last rites returned back to Rajasthan. She has also testified that she has not received any letter from Kailasben as Kailasben was not literate. She has testified that for the first time police came to Sagwada and she gave her statement to the police. She had identified accused as sitting in the Court. In her cross examination she has denied the suggestion that her husband had committed suicide. She had said that her husband had died due to some illness. She had also admitted in her cross examination that a child of her husband born out of earlier wedlock had died due to acid burns. She had also admitted in her cross examination that after the marriage of Kailasben – the deceased, she had visited Santrampur about 8 to 10 times and had all this time she stayed at accused no. 1's house. She has stated that it is true that she was properly looked after as a guest and was nicely fed at accused no.1's residence. She has also admitted in her deposition that during the pilgrimage undertaken by deceased parents-in-law she stayed for 15 days at Santrampur at her place. She has also admitted that

during that time she came to know that the plot and the building thereon adjacent to accused no.1's house was in the name of deceased Kailasben. She has also admitted that she knew that there were 2 plots of lands in the name of deceased Kailasben. She has also admitted in her cross examination that the money for purchase of plots were paid by accused Laxmanbhai. She had stated that when she stayed at Santrampur it was summer. She has stated that when she visited at Santrampur on receipt of news that Kailasben had died due to burn injury she met one Bhagwandas @ Tapeli. She has admitted unequivocally in her cross examination that it is true that she met Bhagwandas in Santrampur and he told her as to what statement she should make about Kailasben. After reaching Sagwada, police came to Sagwada thereafter a month or so for taking her statement. She has also admitted in her deposition that the accused and Bhagwandas @ Tapali are not having good relations. She has denied the suggestion that she has not given any gold to Kailasben. The witness no.1 has further admitted in unequivocal terms that the accused no.1 had rendered financial assistance to Jagdish for going abroad. However she denied the suggestion that this money has not been repaid to Laxmanbhai before the

incident. She has admitted that Jagdishbhai had returned from Kuwait 4 to 5 months before the date of incident. She has admitted that it is true that Kailasben being not literate had not written any letter either to herself or to Jagdish. She has denied the suggestion that she was not giving testimony as tutored by Bhagwandas for falsely implicating the accused.

10. Prakash @ Dhanpal Gangaram is examined at exh. 13, who happened to be step-brother of deceased Kailasben. This witness no.2 Prakash was resident of Sagwada, district Dungarpur, Rajasthan. He has stated in his deposition that the marriage of Kailasben had solemnised in the year 1976 with accused no.1 and since then they were staying with her husband at Santrampur. He has deposed that Kailasben was illtreated by her in-laws and beating for dowry purpose. He has deposed that 6 to 7 years before the incident occurred Kailasben had gone to her place along with Laxmanbhai. At that time she had reported that she has been ill treated for dowry. At that time Kailasben was left behind by accused no.1. It is deposed by him that, thereafter one Gautamlal Panchal had given Kailasben golden necklace, bracelets, ear-rings, sandal etc and had accompanied

her to her in-laws house. He has deposed that thereafter Kailasben had never returned to her house at Rajasthan. He has stated that aforesaid ornaments were taken from one Dhanraj Shroff at Sagwada, the price thereof was paid by younger brother-in-law one Sankarlal Panchal. He said on the date of incident that is in the night of June 19, 1990 and morning of June 20, 1990 they were informed by people coming from Santrampur that due to bursting of gas cylinder Kailasben got burns and she was hospitalised but as soon as they reached Fathepura they were informed that Kailasben was no more. This witness stated that from Sagwada this witness along with his mother and few others had come to Santrampur and saw the lock on the house of the accused. He saw dead-body of his sister which was completely burnt. He further deposed that after the last rites they had returned back to Sagwada. He has stated that he does not know Jayantibhai Panchal but he heard about him. He said that whenever he had gone to her sister's place she wanted to tell him something but because of the apprehension from her in-laws she could not speak. He said that whenever they met, she used to tell him that in-laws were beating her. He has stated that he invited his sister to attend

Kailasben's another sister marriage but she had not attended the same. He has stated that he had seen presence of blood in the latrine when the dead body was found. He has stated that after the incident police had gone to Sagwada to take his statement and he identified the accused those who are sitting in the court.

11. In cross examination he has stated that he is bachelor and his elder brother is married. He has admitted that he does not remember as to when did deceased Kailasben first asked money from his mother. However he says that in his presence she had demanded the gold. He has stated in his cross examination that out of wedlock with accused no.1-the deceased had begotten 2 sons and 3 daughters. He has denied the suggestion that from their house they have not done any social offering or have given any gift to these children of the deceased of accused no.1. He has stated that the youngest daughter was kept by them for 5 years. He has admitted that there is contradiction in his statement that he did not remember what he has stated before the police that when he came to Santrampur the house was locked. He has admitted that he had gone to invite and receive his sister 3 years

ago at Santrampur. He has denied the suggestion that his sister was never beaten by Laxmanbhai – accused no.1 Or accused no.2, mother-in-law. He has denied the suggestion that no ornament or gold was ever demanded from them. He has further denied the statement that dowry was never demanded. He has admitted the fact that Kailasben the deceased married to accused no.1 only 6 years before. He has denied the suggestion that his own father committed suicide. He has denied the suggestion that as Kailasben happened to be step-sister he has deposed against his brother in law falsely. He has denied the suggestion that Kailasben committed suicide because of torturing from her maternal home. He has admitted the fact that after the death of Kailasben he has not made any attempt to take care of her children. He has admitted that they were not going to meet them.

12. The postmortem note shows that cause of death was shock due to extensive 100 % burns. Bharatkumar Ratilal, panch witness exh. 17 has not supported version of the prosecution and therefore he was declared hostile. The another panch was Kantilal Ambalal whose deposition is recorded at exh. 19 has also not supported the case of the prosecution and

therefore he was also declared hostile. The investigating officer Shri. Dalsing Makanbhai Pragi was examined as P.W. no.5 at exh. 21. He has supported the case of the prosecution but in the cross examination he said that the wedlock has been subsisting since last 12 years. He has admitted the fact that when he obtained signature of panchas in the panchnama, the mother of the deceased, Lalitaben and her brother Gautambhai were present in Santrampur and he had not taken their statement. He has further admitted that there is government circular that wherever there is unnatural death by burn of a lady then offence under section 498-A is to be registered compulsorily. He has admitted that the witness Jagdishbhai Gangaram was residing at Kuwait since last 9 years. He has denied the suggestion that he has not taken statement of neighbours staying in the vicinity. He has denied the suggestion that as those witnesses statements were in favour of accused they have not found place in the record of the case. However he has admitted that he has not placed on record any statement of independent witness staying nearby. He says that he knows tailor Panchal and his sister. He stated that he has not taken their statement. He has denied the suggestion that the

accused were not torturing the deceased and the case was made only because of the circular.

13. The fact remains that the prosecution has not examined any independent witness. Non examining any independent witness who were residing in the vicinity of the deceased deserves to be dealt with in its proper perspective. The prosecution witness mainly supporting the case of the prosecution are the investigating officer, step mother Lilaben, step brother Jagdishbhai. Now it deserves to be borne-in-mind that Lilaben and Jagdishbhai were not residing in the vicinity of the deceased at all. Lilaben was residing at Sagwada in Rajasthan as it is emerging from the record and deposition of investigating officer and Jagdishbhai's own deposition that he was abroad since last 9 years. In view of this and in view of the contradictions in their statement it is difficult for any court to accept their testimony as complete truth. As against this non availability of the statement of their neighbouring witness if any would also be a fact giving fatal blow to the case of the prosecution. The prosecution has mainly relied upon the oral statement of witnesses who have merely stated that Kailasben was ill treated. It

needs to be borne in mind that the torture and or cruelty needs to be of such a proportion as to drive the woman to commit suicide. In the instant case the admission which have come up on the cross examination of Lilaben that Lilaben had stayed at deceased's place. When Lilaben had gone to pilgrimage that time also she had stayed at the place of accused. All these factors denote a normal healthy relationship and it did not betray strange or abnormal relationship. In view of this, and in view of the fact that there is no injury on the person of the deceased indicating any ante mortem injury or ill treatment and in absence of any independent witness like any neighbour deposing in favour of prosecution case, no court shall be in a position to convict the accused for the serious offence alleged.

14. The court is conscious that this being an acquittal appeal it should be very slow in interfering with the findings recorded by the trial court which had the benefit of observing the witnesses and their demeanour. The appellate court ordinarily would not disturb the findings of the trial court unless & until it is established on the face of the record that there

is patent miscarriage of justice. In the instant case the R & P clearly show that the prosecution has failed in establishing guilt of the accused and therefore the trial court has rightly recorded the acquittal. This court sitting in the acquittal appeal under section 378 of Cr.P.C., is, therefore, of the view that, the findings of acquittal recorded by the trial court vide order dated 21/1/1993 in Criminal Case no. 65 of 1991 does not deserve to be interfered with. In the result the appeal is deserved to be dismissed, and is dismissed accordingly.

[S.R. BRAHMBHATT, J]

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